



## Metro-Inner North Joint Development Assessment Panel Minutes

**Meeting Date and Time:** Monday, 14 February 2022; 9.00am  
**Meeting Number:** MINJDAP/130  
**Meeting Venue:** Electronic Means

*This DAP meeting was conducted by electronic means (Zoom) open to the public rather than requiring attendance in person*

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## Attendance

### DAP Members

Ms Francesca Lefante (Presiding Member)  
Ms Lee O'Donohue (Deputy Presiding Member)  
Mr John Syme (Third Specialist Member)  
Cr Rick Powell (Local Government Member, City of Subiaco)  
Cr Garry Kosovich (Local Government Member, City of Subiaco)

### Officers in attendance

Mr Scott Price (City of Subiaco)  
Mr Alexander Petrovski (City of Subiaco)  
Mr Brendan Phillips (City of Subiaco)  
Mr Anthony Denholm (City of Subiaco)

### Minute Secretary

Ms Ashlee Kelly (DAP Secretariat)  
Ms Zoe Hendry (DAP Secretariat)

### Applicants and Submitters

Mr Daniel Lees (element)  
Mr Damon Ferguson (Devwest Group)  
Mr Chad Ferguson (Devwest Group)  
Mr Will Schofield (Plus Architects)

### Members of the Public / Media

Mr Lloyd Gorman from Post Newspapers was in attendance.

## 1. Opening of Meeting, Welcome and Acknowledgement

The Presiding Member declared the meeting open at 9.03am on 14 February 2022 and acknowledged the traditional owners and paid respect to Elders past and present of the land on which the meeting was being held.

The Presiding Member announced the meeting would be run in accordance with the DAP Standing Orders 2020 under the *Planning and Development (Development Assessment Panels) Regulations 2011*.

### 1.1 Announcements by Presiding Member

The Presiding Member advised that in accordance with Section 5.16 of the DAP Standing Orders 2020 which states '*A person must not use any electronic, visual or audio recording device or instrument to record the proceedings of the DAP meeting unless the Presiding Member has given permission to do so.*', the meeting would not be recorded.



This meeting was convened via electronic means (Zoom). Members were reminded to announce their name and title prior to speaking.

**2. Apologies**

Nil

**3. Members on Leave of Absence**

Nil

**4. Noting of Minutes**

DAP members noted that signed minutes of previous meetings are available on the [DAP website](#).

**PROCEDURAL MOTION**

**Moved by:** Ms Francesca Lefante

**Seconded by:** Mr John Syme

That the Panel Members receive legal advice from representatives of the Department of Planning, Lands and Heritage and that such advice is received behind closed doors, in accordance with section 5.10.2g of the DAP Standing Orders 2020.

**The Procedural Motion was put and CARRIED UNANIMOUSLY.**

**REASON:** For the panel to receive legal advice.

*The meeting was closed to the public at 9.07am.*

*The meeting was reopened to the public at 10.03am.*

**5. Declaration of Due Consideration**

All members declared that they had duly considered the documents.

**6. Disclosure of Interests**

DAP Member, Cr Garry Kosovich, declared an Impartiality Interest in item 9.1. Cr Kosovich participated in a Special Council Meeting at the City of Subiaco which this application was an Item. Prior to being elected onto Subiaco Council on 16 October 2022, Cr Kosovich had made statements to the City of Subiaco Council and the State Administrative Tribunal opposing this development application

In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2020, the Presiding Member determined that the member listed above, who had disclosed an Impartiality Interest, was permitted to participate in the discussion and voting on the item.



## 7. Deputations and Presentations

- 7.1 Mr Daniel Lees (element) addressed the DAP in support of the recommendation for the application at Item 9.1 and responded to questions from the panel.
- 7.2 The City of Subiaco officers addressed the DAP in relation to the application at Item 9.1 and responded to questions from the panel.

## 8. Form 1 – Responsible Authority Reports – DAP Applications

Nil

## 9. Form 2 – Responsible Authority Reports – DAP Amendment or Cancellation of Approval

### 9.1 No. 263-277 (Lots 23-26) Hay Street and Olive Street, No. 17-19 (Lots 31, 304 & 305), Subiaco

Development Description: Six Storey Mixed Use Building  
Proposed Amendments: Minor alterations, reconfiguration of northern multiple dwellings and commercial tenancies, reduction in onsite car parking bays (6 storey mixed use development)

Applicant: element  
Owner: Hay 263 Pty Ltd  
Responsible Authority: City of Subiaco  
DAP File No: DAP/15/00921

## REPORT RECOMMENDATION

**Moved by:** Ms Lee O'Donohue

**Seconded by:** Mr John Syme

That the Metro Inner North Development Assessment Panel resolves to:

1. **Accept** that the DAP Application reference DAP/15/00921 as detailed on the DAP Form 2 dated 12 January 2022 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** DAP Application reference DAP/15/00921 and accompanying plans (Drawing No. DA0080 Rev A, DA0081 Rev B, DA0082 Rev B, DA0083 Rev A, DA0098 Rev A, DA0099 Rev C, DA0100 Rev C, DA0101 Rev C, DA0102, Rev C, DA0103 Rev C, DA0104 Rev C, DA0105 Rev C, DA0106 Rev B, DA0200 Rev A, DA0201 Rev A, DA0202 Rev A, DA0203 Rev A, DA0210 Rev A, DA0211 Rev A) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, - Metropolitan Region Scheme, and the provisions of the City of Subiaco Local Planning Scheme No. 5, for the proposed minor amendment to the approved six storey mixed use building at No. 263-277 (Lots 23-26) Hay Street and No. 17-19 (Lot 31, 304 and 305) Olive Street, Subiaco, subject to the following conditions:



## New Conditions

20. Prior to occupation, landscaping shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Subiaco. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Subiaco.
21. The street fencing is to be visually permeable above 0.9 metres in height from natural ground level (refer to advice note ii).
22. Prior to occupation, 7 showers (3 male and 3 female, and 1 unisex) are to be provided within the development, to the satisfaction of the City of Subiaco.
23. Prior to occupation, all bicycle parking facilities are to be provided in accordance with Australian Standard AS 2890.3, to the satisfaction of the City of Subiaco.
24. The development is to be carried out in accordance with the plans, drawings and documentation dated 12 January 2022 (Drawing No. DA0080 Rev A, DA0081 Rev B, DA0082 Rev B, DA0083 Rev A, DA0098 Rev A, DA0099 Rev C, DA0100 Rev C, DA0101 Rev C, DA0102, Rev C, DA0103 Rev C, DA0104 Rev C, DA0105 Rev C, DA0106 Rev B, DA0200 Rev A, DA0201 Rev A, DA0202 Rev A, DA0203 Rev A, DA0210 Rev A, DA0211 Rev A) included with the application for development approval.
25. Prior to the occupation of the development any redundant crossovers and kerbs shall be removed and the verge reinstated to the satisfaction of the City of Subiaco and at the expense of the applicant.
26. Prior to the occupation of the development, vehicle crossover(s) shall be constructed in either paving block, concrete, or bitumen and thereafter maintained to the satisfaction of the City of Subiaco.
27. Any signage shall be the subject of a separate planning application unless exempt from the need to obtain planning approval in accordance with *Local Planning Policy 8.2 – Advertisements (Signs)*.
28. Prior to occupation, a minimum of six (6) lockers are to be provided within the development for the use of employees and visitors, to the satisfaction of the City of Subiaco.
29. Prior to occupation, wayfinding signage to direct cyclists to the location of bicycle parking facilities shall be installed and maintained thereafter, to the satisfaction of the City of Subiaco.
30. Prior to the issue of a Building Permit, the applicant shall submit a schedule of materials, colours, finishes and textures for the development to the satisfaction of the City of Subiaco. The schedule may be subject to review and comment by the City's Design Review Panel.



31. Bicycle parking within the verge shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Subiaco. All bicycle parking facilities within the verge are to be maintained by the applicant on an ongoing basis for the life of the development on the site to the satisfaction of the City of Subiaco.

#### **Amended Conditions**

4. All ramps to the basements and circulation areas shall be constructed in accordance with the Australian Standard AS2890.1, unless otherwise approved by the City of Subiaco.
6. All car parking dimensions, manoeuvring areas, crossovers and driveways shall accord with Australian Standard AS2890.1 (as amended), unless otherwise approved by the City of Subiaco.
17. All existing street trees shall be protected and maintained with no pruning permitted without the prior approval of the City of Subiaco. A Tree Preservation Zone (TPZ) Protective fencing shall be formed around each street tree prior to works commencing and shall be retained for the entirety of the project. The TPZ is to be a minimum of two (2) metres extending out from the base of the tree(s).

#### **Deleted Conditions**

1. The residential parking in basement level 2 shall be modified so to reduce the parking allocation of twenty (20) two bedroom apartments from two (2) car bays to one (1) car bay, allowing a further eleven (11) bays to be allocated to the commercial uses (shops and offices) and nine (9) car bays to be allocated to visitor parking, so to ensure compliance with the requirements of the Scheme with respect to the parking for the shops, offices and residential visitor.
2. Prior to the application for a building permit, the owner(s) or the applicant on behalf of the owner(s) shall comply with one of the following requirements:
  - a. Pay a cash-in-lieu contribution of \$315,000 for the equivalent value of 21 car parking spaces, based on the cost of \$15,000 per bay as set out in the City's planning policy 2.13 'Shortfall Cash Payments in Lieu of Car parking in the Town Centre and commercial/residential zone/based on the formula outlined in clause 75 of Town Planning Scheme No. 4; or,
  - b. lodge an appropriate assurance bond/bank guarantee of a value of \$315,000 to the satisfaction of the City. This assurance bond/bank guarantee will only be released in the following circumstances:
    - i. To the City at the date of issue of the Building Permit for the development, or first occupation of the development, whichever occurs first; or
    - ii. to the owner(s)/applicant following receipt by the City of a Statutory Declaration of the prescribed form endorsed by the owner(s)/applicant and stating that they will not proceed with the subject 'Approval to Commence Development'; or
    - iii. to the owner(s)/applicant where the subject 'Approval to Commence Development' did not commence and subsequently expired.



5. The car stacking equipment depicted on the plans hereby approved shall be designed, installed and thereafter maintained so that all vehicle access bays approved within the car stacking equipment can be independently accessed at all times.
9. Seven (7) visitor bicycle spaces shall be provided on site.
20. Notwithstanding conditions 1 and 2 of this approval, the development shall be carried out in accordance with the plans and drawings (DA.002 Rev C, DA.003 Rev C, DA.100 – DA.108 Rev G, DA.200 – DA.201 Rev F, DA.202 – DA.203 Rev E, DA.300 – DA.301 Rev C) and documentation (Landscape Architecture Report and Planning Assessment Report) included within the application for development approval.

### **New Advice Notes**

- i. All conditions, requirements and advice notes detailed on the development approval 7.2015.202.1 granted on 27 April 2016 continue to apply to this approval, with the exception of those noted as part of this recommendation. All remaining and new conditions shall be renumbered accordingly.
- ii. In relation to condition 21, visually permeable means the vertical surface has:
  - Continuous vertical gaps of 50mm or greater width occupying not less than one third of the total surface area;
  - Continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or
  - A surface offering equal or lesser obstruction to view;As viewed directly from the street.
- iii. The applicant is to liaise with the Water Corporation to obtain relevant approvals needed for infrastructure modifications. This is considered a separate approval process and does not prejudice the City's recommendation.
- iv. During the process of strata titling the development, the applicant/subdivider shall set aside ten (10) percent of land to be vested to the Crown as public open space in accordance with s.153 of the *Planning and Development Act 2005*. In lieu of the land being set aside, the City may accept a cash-in-lieu contribution to a sum commensurate with the value of the land required to be aside as public open space.

### **AMENDING MOTION 1**

**Moved by:** Mr John Syme

**Seconded by:** Ms Lee O'Donohue

That a new Condition No. 32 be added to read as follows:

***This decision constitutes a 6 month extension to planning approval under DAP regulation 17 for the whole development valid until 27 October 2022. If the development is not substantially commenced by 27 October 2022, this approval shall lapse and be of no effect.***

**The Amending Motion was put and CARRIED (3/2).**



For: Ms Francesca Lefante  
Ms Lee O'Donohue  
Mr John Syme

Against: Cr Rick Powell  
Cr Garry Kosovich

**REASON:** The majority of Panel members supported a 6 month extension of timeframe, having given due consideration of the request and formed the opinion that the extension of timeframe was appropriate in the context of the actions undertaken by the applicant to implement the development which are considered reasonable in the current covid climate.

### **REPORT RECOMMENDATION (AS AMENDED)**

That the Metro Inner North Development Assessment Panel resolves to:

1. **Accept** that the DAP Application reference DAP/15/00921 as detailed on the DAP Form 2 dated 12 January 2022 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** DAP Application reference DAP/15/00921 and accompanying plans (Drawing No. DA0080 Rev A, DA0081 Rev B, DA0082 Rev B, DA0083 Rev A, DA0098 Rev A, DA0099 Rev C, DA0100 Rev C, DA0101 Rev C, DA0102, Rev C, DA0103 Rev C, DA0104 Rev C, DA0105 Rev C, DA0106 Rev B, DA0200 Rev A, DA0201 Rev A, DA0202 Rev A, DA0203 Rev A, DA0210 Rev A, DA0211 Rev A) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, - Metropolitan Region Scheme, and the provisions of the City of Subiaco Local Planning Scheme No. 5, for the proposed minor amendment to the approved six storey mixed use building at No. 263-277 (Lots 23-26) Hay Street and No. 17-19 (Lot 31, 304 and 305) Olive Street, Subiaco, subject to the following conditions:

### **New Conditions**

20. Prior to occupation, landscaping shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Subiaco. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Subiaco.
21. The street fencing is to be visually permeable above 0.9 metres in height from natural ground level (refer to advice note ii).
22. Prior to occupation, 7 showers (3 male and 3 female, and 1 unisex) are to be provided within the development, to the satisfaction of the City of Subiaco.
23. Prior to occupation, all bicycle parking facilities are to be provided in accordance with Australian Standard AS 2890.3, to the satisfaction of the City of Subiaco.





24. The development is to be carried out in accordance with the plans, drawings and documentation dated 12 January 2022 (Drawing No. DA0080 Rev A, DA0081 Rev B, DA0082 Rev B, DA0083 Rev A, DA0098 Rev A, DA0099 Rev C, DA0100 Rev C, DA0101 Rev C, DA0102, Rev C, DA0103 Rev C, DA0104 Rev C, DA0105 Rev C, DA0106 Rev B, DA0200 Rev A, DA0201 Rev A, DA0202 Rev A, DA0203 Rev A, DA0210 Rev A, DA0211 Rev A) included with the application for development approval.
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27. Any signage shall be the subject of a separate planning application unless exempt from the need to obtain planning approval in accordance with *Local Planning Policy 8.2 – Advertisements (Signs)*.
28. Prior to occupation, a minimum of six (6) lockers are to be provided within the development for the use of employees and visitors, to the satisfaction of the City of Subiaco.
29. Prior to occupation, wayfinding signage to direct cyclists to the location of bicycle parking facilities shall be installed and maintained thereafter, to the satisfaction of the City of Subiaco.
30. Prior to the issue of a Building Permit, the applicant shall submit a schedule of materials, colours, finishes and textures for the development to the satisfaction of the City of Subiaco. The schedule may be subject to review and comment by the City's Design Review Panel.
31. Bicycle parking within the verge shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Subiaco. All bicycle parking facilities within the verge are to be maintained by the applicant on an ongoing basis for the life of the development on the site to the satisfaction of the City of Subiaco.
32. This decision constitutes a 6 month extension to planning approval under DAP regulation 17 for the whole development valid until 27 October 2022. If the development is not substantially commenced by 27 October 2022, this approval shall lapse and be of no effect.

#### **Amended Conditions**

4. All ramps to the basements and circulation areas shall be constructed in accordance with the Australian Standard AS2890.1, unless otherwise approved by the City of Subiaco.
6. All car parking dimensions, manoeuvring areas, crossovers and driveways shall accord with Australian Standard AS2890.1 (as amended), unless otherwise approved by the City of Subiaco.



17. All existing street trees shall be protected and maintained with no pruning permitted without the prior approval of the City of Subiaco. A Tree Preservation Zone (TPZ) Protective fencing shall be formed around each street tree prior to works commencing and shall be retained for the entirety of the project. The TPZ is to be a minimum of two (2) metres extending out from the base of the tree(s).

### **Deleted Conditions**

1. The residential parking in basement level 2 shall be modified so to reduce the parking allocation of twenty (20) two bedroom apartments from two (2) car bays to one (1) car bay, allowing a further eleven (11) bays to be allocated to the commercial uses (shops and offices) and nine (9) car bays to be allocated to visitor parking, so to ensure compliance with the requirements of the Scheme with respect to the parking for the shops, offices and residential visitor.
2. Prior to the application for a building permit, the owner(s) or the applicant on behalf of the owner(s) shall comply with one of the following requirements:
  - a. Pay a cash-in-lieu contribution of \$315,000 for the equivalent value of 21 car parking spaces, based on the cost of \$15,000 per bay as set out in the City's planning policy 2.13 'Shortfall Cash Payments in Lieu of Car parking in the Town Centre and commercial/residential zone/based on the formula outlined in clause 75 of Town Planning Scheme No. 4; or,
  - b. lodge an appropriate assurance bond/bank guarantee of a value of \$315,000 to the satisfaction of the City. This assurance bond/bank guarantee will only be released in the following circumstances:
    - i. To the City at the date of issue of the Building Permit for the development, or first occupation of the development, whichever occurs first; or
    - ii. to the owner(s)/applicant following receipt by the City of a Statutory Declaration of the prescribed form endorsed by the owner(s)/applicant and stating that they will not proceed with the subject 'Approval to Commence Development'; or
    - iii. to the owner(s)/applicant where the subject 'Approval to Commence Development' did not commence and subsequently expired.
5. The car stacking equipment depicted on the plans hereby approved shall be designed, installed and thereafter maintained so that all vehicle access bays approved within the car stacking equipment can be independently accessed at all times.
9. Seven (7) visitor bicycle spaces shall be provided on site.
20. Notwithstanding conditions 1 and 2 of this approval, the development shall be carried out in accordance with the plans and drawings (DA.002 Rev C, DA.003 Rev C, DA.100 – DA.108 Rev G, DA.200 – DA.201 Rev F, DA.202 – DA.203 Rev E, DA.300 – DA.301 Rev C) and documentation (Landscape Architecture Report and Planning Assessment Report) included within the application for development approval.



## New Advice Notes

- i. All conditions, requirements and advice notes detailed on the development approval 7.2015.202.1 granted on 27 April 2016 continue to apply to this approval, with the exception of those noted as part of this recommendation. All remaining and new conditions shall be renumbered accordingly.
- ii. In relation to condition 21, visually permeable means the vertical surface has:
  - Continuous vertical gaps of 50mm or greater width occupying not less than one third of the total surface area;
  - Continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or
  - A surface offering equal or lesser obstruction to view;  
As viewed directly from the street.
- iii. The applicant is to liaise with the Water Corporation to obtain relevant approvals needed for infrastructure modifications. This is considered a separate approval process and does not prejudice the City's recommendation.
- iv. During the process of strata titling the development, the applicant/subdivider shall set aside ten (10) percent of land to be vested to the Crown as public open space in accordance with s.153 of the *Planning and Development Act 2005*. In lieu of the land being set aside, the City may accept a cash-in-lieu contribution to a sum commensurate with the value of the land required to be aside as public open space.

## The Report Recommendation (as amended) was put and CARRIED (3/2).

For: Ms Francesca Lefante  
Ms Lee O'Donohue  
Mr John Syme

Against: Cr Rick Powell  
Cr Garry Kosovich

**REASON:** The majority of the panel members supported the proposed modifications which are considered minor and are appropriate in the context of the original approved plans consistent with the recommendation and reasons outlined in the RAR. The conditions are supported as they relate directly to the Form 2 modifications.

Due regard was given to the applicant's information for time extension, against a range of relevant planning matters, and the majority of panel members formed the opinion that the actions undertaken to implement the development approval as provided by the applicant, are appropriate and reasonable, and considered to reflect conscientious development implementation actions in context of the current covid provisions. On balance the majority of panel members supported a minor timeframe extension.



## 10. State Administrative Tribunal Applications and Supreme Court Appeals

The Presiding Member noted the following SAT Applications –

Current SAT Applications				
File No. & SAT DR No.	LG Name	Property Location	Application Description	Date Lodged
DAP/19/01651 DR160/2020	City of Nedlands	Lot 1 (80) Stirling Highway, Lots 21-23 (2, 4 & 6) Florence Road and Lots 33 & 33 (9&7) Stanley Street, Nedlands	Shopping Centre	21/07/2020
DAP/19/01655 DR178/2021	City of Nedlands	Lot 684 (135) Broadway, Nedlands	Mixed Use Development (26 Serviced Apartments and Café)	30/08/2021
DAP/21/02050 DR21/1245	City of Stirling	Lot 3 (No.27) Pimlott Street & Lot 4 (No.1) Greenacre Street, Dianella	Child Care Premises	21/12/2021

Current Supreme Court Appeals				
File No.	LG Name	Property Location	Application Description	Date Lodged
DAP/20/01884 CIV 1791 of 2021	City of Stirling	Lot 100 Field Street, Mount Lawley	24 multiple dwellings and six (6) grouped dwellings	11 February 2021
DAP/19/01722 CIV 2311 of 2021	City of Stirling	Lot 1 (331) West Coast Drive, Trigg	Mixed Use Development – Six (6) Multiple Dwellings and One (1) Commercial Tenancy	3 December 2021

## 11. General Business

The Presiding Member announced that in accordance with Section 7.3 of the DAP Standing Orders 2020 only the Presiding Member may publicly comment on the operations or determinations of a DAP and other DAP members should not be approached to make comment.

## 12. Meeting Closure

There being no further business, the Presiding Member declared the meeting closed at 11.31am.